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### **THE LAW OF WITNESSES AND EVIDENCE IN CANADA**

**Peter J. Sankoff**  
**Release No. 1, May 2026**

The Law of Witnesses and Evidence in Canada (formerly Witnesses) is a leading comprehensive treatment of the law of evidence as it applies to evidence given by witnesses in civil and criminal proceedings, as well as before administrative tribunals, public inquiries, and legislative committees. This is a practical reference work, providing coverage and expert analysis of evidentiary issues as they arise in these types of proceedings. Individual chapters examine testimonial evidence under subjects such as competence, compellability, compelling attendance, examination and cross-examination, and privilege.

This completely revised work also introduces 6 new chapters on a variety of topics and continues on the standards of excellence established by Witnesses, originally authored by Alan W. Mewett and Peter Sankoff.

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### **What’s new in this update:**

The release updates the following chapters: Chapter 2 (Relevance and Admissibility), Chapter 7 (Witness Testimony: Evidentiary Rules), Chapter 8 (Compelling Attendance), Chapter 17 (Privilege), Chapter 19 (Confessions and Other Protected Statements), Chapter 20 (Improperly Obtained Evidence) and Chapter 21 (The Protection of Witnesses).

### **Highlights: Case Law**

**Privilege — Legal Advice Privilege — Implied Waiver — State of Mind or Other Fairness Considerations** — In *Wang v. Alberta Health Services*, the winning party asserted solicitor-client privilege broadly over the Bill of Costs by generalizing the services provided and masking who provided them. The Alberta Court of Appeal concluded that this created a real unfairness to the other party who had a legitimate interest in a more detailed breakdown of the legal fees. At paragraph 53, the Court stated “. . . a party cannot assert solicitor-client privilege while simultaneously placing the privileged material at issue. This principle reflects a growing recognition that fairness and transparency in costs assessments require a party seeking reimbursement of legal fees — particularly on a full indemnity basis — to disclose sufficient information to permit meaningful scrutiny”: *Wang v. Alberta Health Services*, 2025 ABKB 328.

**Confessions and Other Protected Statements — The Confessions Rule — Applying the Confessions Rule — The Voir Dire** — In *R. v. Bellemere*, the Quebec Court of Appeal found that the trial judge erred in determining the voluntary nature of the accused’s statements to police during a prolonged interrogation, of which the most pivotal portion was not recorded. In paragraph 65, the Court states “Some might think that video recording of an accused person’s confession is a mere procedural formality applicable to its admissibility, the absence of which may not always be significant. In this regard, it is worth recalling what Justice Frankfurter of the United States Supreme Court wrote in *McNabb v. United States*: ‘the history of liberty has largely been the history of observance of procedural safeguards.’ Video recording is a modern technological means by which the judge determining the admissibility of a statement can verify whether the substantive requirements of the confession rule are met.” Associate Justice Cournoyer concluded that the police officers’ failure to continue recording the accused’s interrogation creates doubt regarding the voluntariness of the accused’s confession: *R. v. Bellemere*, 2025 QCCA 822.

**Confessions and Other Protected Statements — The Confessions Rule — Voluntariness — Summary and Concerns** — In *R. v. Ordonio*, the Ontario Court of Appeal concluded the trial judge erred in allowing the admission of the accused’s statement that was obtained using the Reid Technique, which has been critiqued for its risk of producing false confessions due to the coercive nature of the techniques deployed on the accused. The Court was not persuaded by proposed amendments to the common law confessions rule that would require “[discarding] the case-by-case examination of interrogations using the Reid Technique and substitute a legal presumption that a confession produced by [this technique] is ‘inevitably suspect.’” The Crown would then be responsible for the evidentiary burden of demonstrating that the confession was indeed voluntary. Brown J.A. agreed that while the Reid Technique has

shortcomings, the academic conclusions on its use are not conclusive and therefore do not support amending the current confessions rule: *R. v. Ordonio*, 2025 ONCA 135 at para 68.

**Improperly Obtained Evidence — Section 24(2) and the Exclusion of Evidence in Civil Cases — Proceedings With a State Party** — In *McCormack v. Evans*, wiretap communications were obtained of the accused, but ultimately not used due to constitutional concerns in the criminal proceedings, which were stayed. The accused then sued for malicious prosecution, where the wiretap evidence was admitted. The Ontario Court of Appeal recognized that “because [civil and criminal proceedings] involve different legal, policy and public interest considerations, exclusion of evidence in one context does not imply exclusion in another.” The accused brought the civil action himself and did not face the same risk of loss of liberty that he did in the criminal proceedings, and the wiretap communications were a critical piece of evidence in allowing the trial judge to determine the truth of the matter at hand: *McCormack v. Evans*, 2025 ONCA 767 at para 75.